

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DONG SHAW,

Index No.:

Plaintiff,

- against -

BANK OF AMERICA,

Defendant.  
-----X

SUMMONS  
NEW YORK COUNTY CLERKS OFFICE

MAILED  
AUG 03 2007

Date of Purchase of  
Index Number:

07110639

FILED

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer within twenty [20] days after the service (or within thirty [30] days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

The Plaintiff designates **New York County** as the place of trial which is the county in which **the acts and omissions giving rise to the allegations made in the complaint occurred.**

Dated: New York, New York  
August 2, 2007

KAISER SAURBORN & MAIR, P.C.  
Attorneys for Plaintiff

By: \_\_\_\_\_

Daniel J. Kaiser, Esq.  
20 Exchange Place, 11<sup>th</sup> Floor  
New York, New York 10005  
(212) 338-9100

FILED  
NEW YORK  
COUNTY CLERK'S OFFICE

NEW YORK  
COUNTY CLERK'S OFFICE

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AUG 03 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

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8/3/07

NEW YORK COUNTY CLERK AND CLERK OF THE SUPREME COURT, NEW YORK COUNTY  
FILED  
AUGUST 3, 2007  
NEW YORK COUNTY CLERK'S OFFICE

**NEW YORK STATE SUPREME COURT  
COUNTY OF NEW YORK**

-----x  
DONG SHAW,

Plaintiff,

Index No.:

-against-

**COMPLAINT**

BANK OF AMERICA,

Defendant.  
-----x

Plaintiff, Dong Shaw, by his attorneys, Kaiser Saurborn & Mair, P.C., as and for his  
complaint against defendant alleges as follows:

**PARTIES, JURISDICTION AND NATURE OF ACTION**

1. Plaintiff, Dong Shaw ("plaintiff" or "Shaw"), a Chinese American, is a former employee of Bank of America.
2. Defendant, Bank of America ("defendant" or "Bank of America"), is a banking institution authorized to conduct business in the State of New York.
3. Venue is properly laid in this county in that the events that are the basis of the legal claims asserted by plaintiff occurred in New York County.
4. In this action plaintiff asserts defendant discriminated against him because of his national origin and retaliated against him for complaining of the discrimination. Plaintiff asserts his claims pursuant to Executive Law § 296 and New York City Administrative Code § 8-502(a).

**BACKGROUND**

**I.**

**MR. SHAW'S EMPLOYMENT**

5. On February 14, 2005, Mr. Shaw commenced his employment with Bank of

America in the position of Senior Research Analyst reporting to Vikram Kuriyan.

6. During the entire tenure of his employment, Mr. Shaw performed his job responsibilities expertly and diligently.
7. For example, methodologies for simulation in testing investment strategies, such as his "building block idea," are still utilized by Bank of America to this day.
8. Defendant had a responsibility to help insure that Mr. Shaw's working environment remained free of unlawful discriminatory and retaliatory conduct.

## II.

### THE NATIONAL ORIGIN DISCRIMINATION

9. On February 2, 2006, at a meeting attended by Joe Tannehill, Mr. Shaw's manager, and by Mr. Shaw, Mr. Tannehill began laughing at Mr. Shaw's accent.
10. He further accused Mr. Shaw of speaking in a rambling and funny manner and characterized his communication skills as poor.
11. Mr. Shaw was stunned and humiliated by the disparaging remarks and objected to Mr. Tannehill's comments.
12. Exactly three months later Mr. Shaw was handed a written counseling memorandum.
13. The counseling memorandum actually criticized Mr. Shaw for meeting his fiduciary obligations by identifying the error in the simulation system.
14. The work criticisms were entirely unfounded and obviously intended to serve as a pretext.

### **III.**

#### **THE RETALIATION**

15. On May 9, 2006, Mr. Shaw, in a meeting with Mr. Tannehill, told Mr. Tannehill that his disparaging remarks concerning his accent made him uncomfortable and that his conduct constituted discrimination.
16. Bank of America conducted no investigation into Mr. Shaw's discrimination complaint.
17. On August 8, 2006, Mr. Shaw was summarily terminated.
18. His termination was a direct consequence of Mr. Tannehill's discriminatory animus as well as retaliation for Mr. Shaw's objections to the illegal conduct.
19. The illegal treatment of Mr. Shaw was consistent with a wider pattern of discrimination committed by Mr. Tannehill.
20. Since the time Mr. Tannehill assumed supervisory responsibility for the research group, all of his foreign born direct reports except one have been fired, resigned, or transferred to another group.
21. Upon information and belief, defendant knew that its actions violated State and City law.
22. Upon information and belief, defendant acted maliciously and/or in reckless disregard of plaintiff's civil rights.

#### **CAUSE OF ACTION I**

23. Plaintiff repeats and reiterates the allegations contained in paragraphs "1" through "22" as if incorporated and realleged herein.

24. Defendant discriminated against plaintiff because of his national origin/race and retaliated against him for complaining of the discrimination.
25. By reason thereof, defendant has violated Executive Law § 296, et seq., and plaintiff has been damaged in an amount to be determined at trial, including, but not limited to, economic damages and emotional injuries.

#### **CAUSE OF ACTION II**

26. Plaintiff repeats and reiterates the allegations contained in paragraphs “1” through “22” and “24” as if incorporated and realleged herein.
27. Defendant discriminated against plaintiff because of his national origin/race and retaliated against him for complaining of the discrimination.
28. By reason thereof defendant has violated New York City Administrative Code § 8-502(a), et. seq., and plaintiff has been damaged in an amount to be determined at trial, including, but not limited to, economic damages resulting from lost past and future earnings, other employment benefits, and emotional injuries.

**WHEREFORE**, plaintiff demands judgement against defendant as follows:

- (i) On the First Cause of Action assessing compensatory damages against defendant in an amount to be determined at trial;
- (ii) On the Second Cause of Action assessing compensatory damages and punitive damages against defendant in an amount to be determined at trial;
- (iii) Attorney’s fees and disbursements; and

CLERK OF THE  
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2007

FILED  
8/3/07  
COUNTY CLERK  
NEW YORK COUNTY

Daniel J. Kaiser

KAISER SAURBORN & MAIR, P.C.  
Attorneys for Plaintiff  
20 Exchange Pl., 43<sup>rd</sup> Fl.  
New York, New York 10005  
(212) 338-9100

Dated: New York, New York  
August 2, 2007

(iv) For such other relief as the Court deems just and proper.

has been compared by me with the original and found to be a true and complete copy thereof.

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for

. I have read the annexed

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following.

The reason I make this affirmation instead of

is

I affirm that the foregoing statements are true under penalties of perjury.

Dated:

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

being sworn says: I am

Individual  
Verification

in the action herein; I have read the annexed

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Corporate  
Verification

the of

a corporation, one of the parties to the action; I have read the annexed

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on

, 20

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

being sworn says: I am not a party to the action, am over 18 years of

age and reside at

On

, 20 , I served a true copy of the annexed

in the following manner:

Service  
by Mail

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

Personal  
Service

by delivering the same personally to the persons at the address indicated below:

Service by  
Electronic  
Means

by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney indicating that the transmission was received, and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

Overnight  
Delivery  
Service

by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

Sworn to before me on

, 20

(Print signer's name below signature)

DONG SHAW,

Plaintiff,

- against -

BANK OF AMERICA,

Defendant.

SUMMONS AND COMPLAINT

KAISER SAURBORN & MAIR, P.C.  
COUNSELORS AT LAW

Attorneys for

Plaintiff

20 EXCHANGE PLACE  
NEW YORK, NEW YORK 10005  
(212) 338-9100

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: .....

Signature.....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated: .....

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF  
ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

20

☐

NOTICE OF  
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within named Court,  
at  
on

20

, at

M.

Dated:

KAISER SAURBORN & MAIR, P.C.  
COUNSELORS AT LAW

Attorneys for

20 EXCHANGE PLACE  
NEW YORK, NEW YORK 10005

To:

Attorney(s) for



Ivan R. Novich, Esq.  
 Edwards Angell Palmer & Dodge LLP  
 1 Giralda Farms  
 Madison, NJ 07940  
 Tele. No. (973) 921-5227  
 Fax No. (973) 376-3380  
 inovich@eapdlaw.com

AMERICAN CLERICAL SERVICE

Attorneys for Defendant,  
 Bank of America

SUPREME COURT FOR THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

_____	)
DONG SHAW,	)
	)
Plaintiff,	)
	)
-against-	)
	)
BANK OF AMERICA	)
	)
Defendant.	)
_____	)

110639107  
 INDEX NO. ~~100639-2007~~

ANSWER

**FILED**  
 SEP 20 2007  
 COUNTY CLERK'S OFFICE  
 NEW YORK

Now comes Bank of America, N.A., incorrectly identified by Plaintiff as "Bank of America.", ("Defendant" or "Bank of America"), by its attorneys, Edwards Angell Palmer & Dodge LLP, on knowledge as to its own actions, and otherwise upon information and belief, responds to the complaint ("Complaint") by Dong Shaw ("Plaintiff" or "Shaw"), as follows:

**PARTIES, JURISDICTION AND NATURE OF ACTION**

1. Defendant admits that Plaintiff is a former employee of Defendant. Upon information and belief, Defendant admits that Plaintiff is a citizen of the United States. Upon information and belief, Defendant admits that Plaintiff's national origin is Chinese. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 1 of the Complaint.

of the United States of America with its principal place of business in Charlotte, North Carolina. Defendant admits that it conducts business in the State of New York. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 2 of the Complaint.

3. Paragraph 3 states a conclusion of law to which no response is required. To the extent a response is required, Defendant denies each and every allegation of Paragraph 3 of the Complaint.

4. Defendant admits that Plaintiff purports to assert claims against Defendant and that he purports to assert such claims pursuant to Executive Law § 296 and New York City Administrative Code § 8-502(a). Except as expressly admitted, Defendant denies each and every allegation of Paragraph 4 of the Complaint.

5. Defendant admits that Plaintiff began his employment with Defendant on or around February 14, 2005, as a Quantitative Research Analyst in the Quantitative Strategies Group managed by Vikram Kuriyan. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 5 of the Complaint.

6. Defendant denies each and every allegation of Paragraph 6 of the Complaint.

7. Defendant admits that some methodologies for simulation testing of investment strategies are utilized by Defendant today. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 7 of the Complaint.

8. Defendant admits it is committed to and has a duty to maintain a workplace free of unlawful discrimination and retaliation for its employees, including Plaintiff, in accordance with federal, state and local law. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 8 of the Complaint.

### **THE NATIONAL ORIGIN DISCRIMINATION**

9. Defendant denies the allegations of Paragraph 9 of the Complaint.
10. Defendant admits that during Plaintiff's performance review in February 2006, Joe Tannehill("Tannehill") told Plaintiff that when asked a direct question, Plaintiff sometimes responded in a rambling fashion and did not provide a clear answer. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 10 of the Complaint.
11. Defendant denies that Tannehill's comment as described in Paragraph 10 above, is disparaging. Defendant admits that on or around May 8, 2006, in response to a Written Counseling –Performance & Behavior ("Written Counseling"), Plaintiff submitted a "Response to the 'Written Counseling—Performance & Behavior,'" which is a written document that speaks for itself. Defendant lacks sufficient knowledge and information to admit or deny the remaining allegations of Paragraph 11 of the Complaint and therefore Defendant denies each of them.
12. Defendant admits that Plaintiff was given a Written Counseling on or around May 8, 2006. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 12 of the Complaint.
13. Defendant states that the Written Counseling is a written document that speaks for itself. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 13 of the Complaint.
14. Defendant denies each and every allegation of Paragraph 14 of the Complaint.

### **III.**

### **THE RETALIATION**

15. Defendant admits that on or around May 9, 2006, Plaintiff and Tannehill met, and

Plaintiff sometimes responded to direct questions in a rambling fashion and did not provide a clear answer, made him uncomfortable. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 15 of the Complaint.

16. Defendant admits that Plaintiff did not make a discrimination complaint while he was employed by Defendant, and therefore, Defendant admits that it made no investigation of a discrimination complaint by Plaintiff while he was employed by Defendant. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 16 of the Complaint.

17. Defendant admits that on August 8, 2006, it terminated Plaintiff's employment. Except as expressly admitted, Defendant denies each and every allegation of Paragraph 17 of the Complaint.

18. Defendant denies each and every allegation of Paragraph 18 of the Complaint.

19. Defendant denies each and every allegation of Paragraph 19 of the Complaint.

20. Defendant denies each and every allegation of Paragraph 20 of the Complaint.

21. Defendant denies each and every allegation of Paragraph 21 of the Complaint.

22. Defendant denies each and every allegation of Paragraph 22 of the Complaint.

#### **CAUSE OF ACTION I**

23. Defendant repeats and incorporates herein by reference each of the foregoing Paragraphs 1 through 22, as if fully set forth herein.

24. Defendant denies each and every allegation of Paragraph 24 of the Complaint.

25. Defendant denies each and every allegation of Paragraph 25 of the Complaint.

#### **CAUSE OF ACTION II**

26. Defendant repeats and incorporates herein by reference each of the foregoing Paragraphs 1 through 25, as if fully set forth herein.

27. Defendant denies each and every allegation of Paragraph 27 of the Complaint.

28. Defendant denies the allegations of Paragraph 28 of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

29. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

30. Plaintiff's claims, in whole or in part or portions thereof, are barred by the applicable statutes of limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

31. Plaintiff's claims are barred, in whole or in part, because Plaintiff was an employee-at-will.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

32. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot prove that Defendant knew or should have known of any alleged discriminatory or retaliatory treatment of the Plaintiff or that Defendant acquiesced in any alleged such treatment.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

33. Plaintiff's claims are barred, in whole or in part, because Defendant exercised reasonable care to prevent and correct promptly any discriminatory or retaliatory behavior at Plaintiff's workplace by having an anti-discrimination policy with a complaint procedure.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

34. Plaintiff's claims are barred, in whole or in part, because Defendant has policies prohibiting discrimination and retaliation and procedures for investigating and preventing discrimination and retaliation and Plaintiff unreasonably failed to take action, pursuant to those policies and procedures or otherwise, to be free from discrimination and retaliation.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

35. Plaintiff's claims are barred, in whole or in part, because Defendant did not authorize, participate in, consent to, or otherwise ratify the conduct about which Plaintiff complains.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

36. Plaintiff's claims are barred, in whole or in part, to the extent he failed to comply with and satisfy all of the procedural prerequisites for bringing and maintaining an action under the New York Human Rights Law and the Administrative Code of the City of New York.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

37. Plaintiff's claims are barred, in whole or in part, because he failed to adequately mitigate his alleged damages.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

38. To the extent that Plaintiff seeks to assert claims for emotional distress, such claims are barred, in whole or in part, by the exclusive remedies provision of the New York Workers' Compensation Law.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

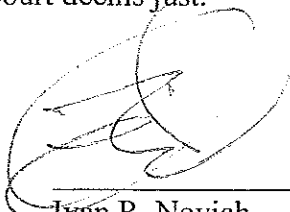
39. To the extent Plaintiff seeks punitive damages, such damages are not recoverable under his Cause of Action I.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

40. After-acquired evidence of Plaintiff's acts and/or omissions bars Plaintiff from any remedy, or certain remedies, and/or warrants a reduction in any damages to which Plaintiff claims he is entitled.

WHEREFORE, Defendant demands judgment dismissing the Complaint with prejudice, together with costs and disbursements of this action, reasonable attorneys' fees and such other and further relief as the Court deems just.

Dated: September 17, 2007  
Madison, New Jersey



Ivan R. Novich  
EDWARDS ANGELL PALMER &  
DODGE LLP  
1 Giralda Farms  
Madison, NJ 07940  
Direct Tele. No. (973) 921-5227  
Fax No. (973) 376-3380  
inovich@eapdlaw.com

Attorneys for Defendant,  
Bank of America, N.A..

**FILED**  
9/20/07  
**COUNTY CLERK**  
**NEW YORK COUNTY**

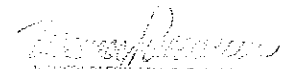
CLERK OF THE COURT  
NEW YORK COUNTY  
JULY 19 2007

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9/20/2007

  
COUNTY CLERK AND CLERK OF THE  
SUPERIOR COURT, NEW YORK COUNTY  
RECEIVED JULY 19 2007

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK                     )  
  ) ss.:  
COUNTY OF NEW YORK                )

John Francavillo, being duly sworn says:

That deponent is not a party to this action, is over 18 years of age, and resides in Kings County, New York

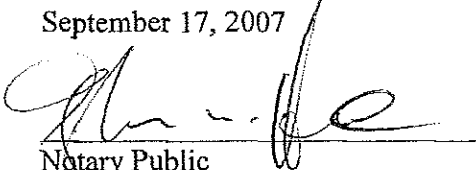
That on September 17, 2007, deponent served the within **DEFENDANT'S RESPONSE TO PLAINTIFF'S THIRD REQUEST FOR PRODUCTION OF DOCUMENTS** by mailing the same in a sealed envelope, via Federal Express, addressed to the last known address of the addressee(s) as indicated below:

TO:

Michael A. Bedell, Esquire  
Bedell & Forman, LLP  
44 Wall Street, 12th Floor  
New York, NY 10005

  
\_\_\_\_\_  
John Francavillo

Sworn to before me this  
September 17, 2007

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

GLENN M. HUZINEC  
Notary Public, State of New York  
No. 01HU4873127  
Qualified in Kings County & 21 County  
Commission Expires Oct. 6, 2010





545505

SUPREME COURT OF NEW YORK  
NEW YORK

INDEX NO: 110639/07

FILE DATE: 8/3/2007

ATTY: KAISER SAURBORN & MAIR, P.C.  
20 EXCHANGE PLACE  
NEW YORK, NY 10005

STATE OF NEW YORK: COUNTY OF NEW YORK

EPS No. 531326

Attorney File No.

Batch No. 104493

DONG SHAW

Plaintiff(s)

- against -

BANK OF AMERICA

Defendant(s)

## STATE OF NEW YORK, COUNTY OF QUEENS: SS:

CHARLES F. MON BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION AND IS OVER THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on 8/13/2007 at 1:35PM at 345 PARK AVENUE, NEW YORK, NY 10154, deponent served the within SUMMONS & COMPLAINT on BANK OF AMERICA. At time of service the index number and date of filing were on the SUMMONS & COMPLAINT

## CORPORATION

By delivering to and leaving with BANK OF AMERICA and that the deponent knew the person so served to be the GENERAL AGENT, CAROLYN AYALA, AUTHORIZED TO ACCEPT ON BEHALF of the corporation.

## A DESCRIPTION OF THE DEFENDANT OR OTHER PERSON SERVED ON BEHALF OF THE DEFENDANT IS AS FOLLOWS:

Approximate age: 23  
Color of skin: WHITE

Approximate weight: 110  
Color of hair: BROWN

Approximate height: 5'3"  
Sex: F

FILED

AUG 20 2007

COUNTY CLERK'S OFFICE  
NEW YORK

Sworn to before me on 8/14/2007

NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MA6108632  
Qualified in Nassau County  
Commission Expires 4/19/2008

LUIS A. CRESPO  
Commissioner of Deeds  
City of New York No. 4-4920  
Certificate Filed in Queens County  
Commission Expires Aug. 1, 2009

KEVIN T. MACTIERNAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MA6108632  
Qualified in Nassau County  
Commission Expires 4/19/2008

ARTAK RAEVSKY  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RA6123189  
Qualified in Queens County  
Commission Expires 2/26/2009

LORRE A. DUNNE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01DU8016358  
Qualified in Queens County  
Commission Expires 11/16/2010

NP

ELITE PROCESS SERVERS \* 88-08 Little Neck Parkway, Floral Park, NY 11001

COURT: SUPREME COURT OF NEW YORK  
COUNTY: NEW YORK

INDEX NO: 110639/07

X

DONG SHAW

Plaintiff(s)

- against -

BANK OF AMERICA

Defendant(s)

X

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## AFFIDAVIT OF SERVICE

---

KAISER SAURBORN & MAIR, P.C.  
Attorney for Plaintiffs  
20 EXCHANGE PLACE  
NEW YORK, NY 10005  
212-338-9100  
212-338-9088

**ELITE PROCESS SERVERS \* 88-08 Little Neck Parkway, Floral Park, NY 11001**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**DONG SHAW,**

**Plaintiff,**

**- against -**

**BANK OF AMERICA,**

**Defendant.**

Index No.: 110639/07

**STIPULATION EXTENDING  
DEFENDANT'S TIME TO RESPOND  
TO THE COMPLAINT**

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the parties hereto that the time for defendant, Bank of America, to answer, move, or otherwise respond to the complaint is extended to and including September 17, 2007.

IT IS FURTHER STIPULATED AND AGREED by the undersigned counsel that the above-named defendant does not and shall not contest the complaint on the grounds of insufficiency of service of place and manner of service.

IT IS FURTHER STIPULATED AND AGREED by the undersigned counsel that this stipulation may be signed in counterparts and/or by facsimile or email transmission with the same force and effect as a signed original.

Dated: August 31, 2007

**KAISER SAURBORN & MAIR, P.C.**  
Attorneys for Plaintiff,  
Dong Shaw

By: \_\_\_\_\_

Daniel J. Kaiser, Esq.  
20 Exchange Place, 11<sup>th</sup> Fl.  
New York, N.Y. 10005  
(212) 338-9100

Dated: August 30, 2007

**EDWARDS ANGELL PALMER & DODGE LLP**  
Attorneys for Defendant,  
Bank of America

By: \_\_\_\_\_

Laurie E. Morrison, Esq.  
750 Lexington Avenue  
New York, N.Y. 10022  
(212) 912-2916

**FILED**  
AUG 31 2007  
CLERK'S OFFICE  
NEW YORK

Siobhan M. Sweeney, Esq.  
Of Counsel

310015

8/31/2007

CLERK OF THE  
SUPREME COURT, NEW YORK COUNTY  
FACSIMILE TRANSMISSION TO COUNSEL

111 Huntington Avenue  
Boston, MA 02199-7613  
(617) 517-5596

**KAISER SAURBORN & MAIR, P.C.  
COUNSELORS AT LAW**

20 Exchange Place  
New York, New York 10005  
TEL: (212) 338-9100  
FAX: (212) 338-9088

**Fax Transmission**

Date: August 31, 2007

To: Laurie Morrison, Esq.

Fax No.: (866) 204-2772

Re: Dong Shaw v. Bank Of America

From: Daniel J. Kaiser, Esq.

Total pages including this cover sheet: 3

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**REMARKS:**

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**NOTE:**

**THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS LEGALLY PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU, THE READER OF THIS MESSAGE, ARE NOT THE INTENDED RECIPIENT OF THIS FAX TRANSMISSION, YOU ARE HEREBY NOTIFIED THAT ANY COPYING, DISTRIBUTION OR DISSEMINATION OF THIS FAX, AND ALL PAPERS WITH IT, IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS FAX IN ERROR, KINDLY NOTIFY US IMMEDIATELY AT OUR TELEPHONE NUMBER LISTED ABOVE, SO THAT WE MAY ARRANGE FOR RETURN OF THIS FAX TO US AT NO COST TO YOU. THANK YOU.**



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DONG SHAW,

Index No.: 110639/07

Plaintiff,

-against-

BANK OF AMERICA,

Defendants.  
-----X

**NOTICE OF CHANGE  
OF ADDRESS**

FILED  
OCT 05 2007  
NEW YORK  
COUNTY CLERKS OFFICE

PLEASE TAKE NOTICE that Kaiser Saurborn & Mair, P.C., counsel for plaintiff in the above-captioned matter, has moved its offices to 111 Broadway, 18<sup>th</sup> floor, New York, New York 10006, effective October 1, 2007. Our telephone and facsimile numbers remain the same.

Dated: New York, New York  
September 25, 2007

Kaiser Saurborn & Mair, P.C.  
Attorneys for plaintiff

By: \_\_\_\_\_  
Daniel J. Kaiser  
111 Broadway, 18<sup>th</sup> floor  
New York, New York 10006  
(212) 338-9100

TO:

Sioban M. Sweeney, Esq.  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, Mass 02199  
Attorneys for defendant

Trial support/motion support office

10/5/2007

310016  
CLERK OF THE  
SUPREME COURT, NEW YORK COUNTY  
SIGNATURE REQUIRED

MODE = MEMORY TRANSMISSION

START=SEP-27 15:41

END=SEP-27 15:42

FILE NO. = 097

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	a	18883259182	002/002	00:00'37"

-KAISER SAURBORN & MAIR -

\*\*\*\*\* -KAISER SAURBORN - \*\*\*\*\* - 212 338 9088- \*\*\*\*\*

**KAISER SAURBORN & MAIR, P.C.  
COUNSELORS AT LAW**

111 Broadway  
New York, New York 10006  
TEL: (212) 338-9100  
FAX: (212) 338-9088

**Fax Transmission**

Date: September 27, 2007  
To: Sioban M. Sweeney Esq.  
Fax No.: 888-325-9182  
Re: Dong Shaw v. Bank Of America  
From: Daniel J. Kaiser, Esq.

Total pages including this cover sheet: 2

**REMARKS:**

**NOTE:**

**THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS LEGALLY PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU, THE READER OF THIS MESSAGE, ARE NOT THE INTENDED RECIPIENT OF THIS FAX TRANSMISSION, YOU ARE HEREBY NOTIFIED THAT ANY COPYING, DISTRIBUTION OR DISSEMINATION OF THIS FAX, AND ALL PAPERS WITH IT, IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS FAX IN ERROR, KINDLY NOTIFY US IMMEDIATELY AT OUR TELEPHONE NUMBER LISTED ABOVE, SO THAT WE MAY ARRANGE FOR RETURN OF THIS FAX TO US AT NO COST TO YOU. THANK YOU.**



**AFFIDAVIT OF SERVICE BY FAX & MAIL**

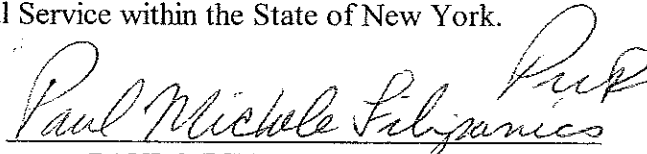
Paul Michele Filipanics, being duly sworn, deposes and says, that he is not a party to the within action, is over 18 years of age and resides in New York State.

That on the 27<sup>th</sup> day of September, 2007, affiant served the within **Notice of Change of Address** upon defendant by faxing and mailing a true copy of the same to their offices via U.S.

Mail, in a sealed envelope with postage prepaid thereon, addressed to:

Sioban M. Sweeney, Esq.  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, Mass 02199  
F: 888-325-9182

This true copy was sent to the address referenced above by depositing the envelope in an official depository of the United States Postal Service within the State of New York.

  
PAUL MICHELE FILIPANICS

Sworn to before me this  
2<sup>nd</sup> of October, 2007

  
NOTARY PUBLIC

HENRY L. SAURBORN JR.  
Notary Public, State of New York  
No. 31-4983532  
Qualified in New York County  
Commission Expires July 1, 20 11

I, the undersigned, am an attorney admitted to practice in the courts of New York, and

☐ certify that the annexed  
has been compared by me with the original and found to be a true and complete copy thereof.

☐ say that: I am the attorney of record, or of counsel with the attorney(s) of record, for

☐ I have read the annexed

☐ know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following.

The reason I make this affirmation instead of \_\_\_\_\_ is \_\_\_\_\_

I affirm that the foregoing statements are true under penalties of perjury.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_

ss:

being sworn says: I am \_\_\_\_\_

☐ in the action herein; I have read the annexed

☐ know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

☐ the \_\_\_\_\_ of \_\_\_\_\_

☐ a corporation, one of the parties to the action; I have read the annexed

☐ know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following: \_\_\_\_\_

Sworn to before me on \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_

ss:

being sworn says: I am not a party to the action, am over 18 years of

age and reside at \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, I served a true copy of the annexed  
in the following manner:

☐ by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

☐ by delivering the same personally to the persons at the address indicated below:

☐ by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the attorney for that purpose. In doing so I received a signal from the equipment of the attorney indicating that the transmission was received, and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

☐ by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below: \_\_\_\_\_

Sworn to before me on \_\_\_\_\_, 20\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DONG SHAW,

Plaintiff,

- against -

BANK OF AMERICA,

Defendant.

NOTICE OF CHANGE OF ADDRESS

**KAISER SAURBORN & MAIR, P.C.**  
COUNSELORS AT LAW

Attorneys for

Plaintiff

20 EXCHANGE PLACE  
NEW YORK, NEW YORK 10005  
(212) 338-9100

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: .....

Signature.....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF  
ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

20

☐

NOTICE OF  
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within named Court,  
at  
on

20

, at

M.

Dated:

**KAISER SAURBORN & MAIR, P.C.**  
COUNSELORS AT LAW

Attorneys for

20 EXCHANGE PLACE  
NEW YORK, NEW YORK 10005

To:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DONG SHAW,

Index No.: 110639/07

Plaintiff,

-against-

BANK OF AMERICA,

Defendants.  
-----X

**NOTICE OF CHANGE  
OF ADDRESS**

**FILED**

NOV 15 2007

NEW YORK  
COUNTY CLERK'S OFFICE

PLEASE TAKE NOTICE that Kaiser Saurborn & Mair, P.C., counsel for plaintiff in the

above-captioned matter, has moved its offices to 111 Broadway, 18<sup>th</sup> floor, New York, New York 10006, effective October 1, 2007. Our telephone and facsimile numbers remain the same.

Dated: New York, New York  
September 25, 2007

Kaiser Saurborn & Mair, P.C.  
Attorneys for plaintiff

By: \_\_\_\_\_

Daniel J. Kaiser  
111 Broadway, 18<sup>th</sup> floor  
New York, New York 10006  
(212) 338-9100

TO:

Sioban M. Sweeney, Esq.  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, Mass 02199  
Attorneys for defendant

**RECEIVED**

OCT 05 2007

**TRIAL SUPPORT OFFICE**

Trial support/motion support office

11/15/2007

MODE = MEMORY TRANSMISSION

START=SEP-27 15:41

END=SEP-27 15:42

FILE NO.= 097

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
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-KAISER SAURBORN & MAIR -

\*\*\*\*\* -KAISER SAURBORN - \*\*\*\*\* - 212 338 9088- \*\*\*\*\*

**KAISER SAURBORN & MAIR, P.C.  
COUNSELORS AT LAW**

111 Broadway  
New York, New York 10006  
TEL: (212) 338-9100  
FAX: (212) 338-9088

**Fax Transmission**

Date: September 27, 2007  
To: Sioban M. Sweeney Esq.  
Fax No.: 888-325-9182  
Re: Dong Shaw v. Bank Of America  
From: Daniel J. Kaiser, Esq.

Total pages including this cover sheet: 2

**REMARKS:**

**NOTE:**

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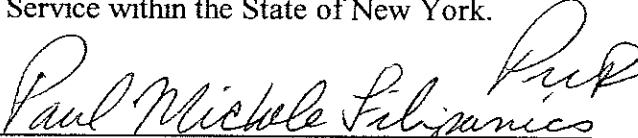
**AFFIDAVIT OF SERVICE BY FAX & MAIL**

Paul Michele Filipanics, being duly sworn, deposes and says, that he is not a party to the within action, is over 18 years of age and resides in New York State.

That on the 27<sup>th</sup> day of September, 2007, affiant served the within **Notice of Change of Address** upon defendant by faxing and mailing a true copy of the same to their offices via U.S. Mail, in a sealed envelope with postage prepaid thereon, addressed to:

Sioban M. Sweeney, Esq.  
Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue  
Boston, Mass 02199  
F: 888-325-9182

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PAUL MICHELE FILIPANICS

Sworn to before me this  
2<sup>nd</sup> of October, 2007

  
NOTARY PUBLIC

HENRY L. SAURBORN JR.  
Notary Public, State of New York  
No. 31-4983532  
Qualified in New York County  
Commission Expires July 1, 20 11

I, the undersigned, am an attorney admitted to practice in the courts of New York, and  
certify that the annexed  
has been compared by me with the original and found to be a true and complete copy thereof.

Check Applicable Box  
☐ Attorney's Certification

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for  
. I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information  
and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon  
knowledge, is based upon the following.

☐ Attorney's Verification by Affirmation

The reason I make this affirmation instead of is

I affirm that the foregoing statements are true under penalties of perjury.

Dated: \_\_\_\_\_  
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ss:  
being sworn says: I am

☐ Individual Verification  
in the action herein; I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on  
information and belief, and as to those matters I believe them to be true.  
the of

☐ Corporate Verification  
a corporation, one of the parties to the action; I have read the annexed  
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on  
information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on , 20 \_\_\_\_\_  
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ss:  
being sworn says: I am not a party to the action, am over 18 years of

age and reside at  
On , 20 , I served a true copy of the annexed

☐ Service by Mail  
in the following manner:  
by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service  
within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

☐ Personal Service  
by delivering the same personally to the persons at the address indicated below:

☐ Service by Electronic Means  
by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the  
attorney for that purpose. In doing so I received a signal from the equipment of the attorney indicating that the transmission was received,  
and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the  
U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below:

☐ Overnight Delivery Service  
by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time  
designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

Sworn to before me on , 20 \_\_\_\_\_

Index No. 110639

Year 20 07

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DONG SHAW,

Plaintiff,

- against -

BANK OF AMERICA,

Defendant.

**FILED**

NOV 15 2007

NEW YORK  
COUNTY CLERK'S OFFICE

## NOTICE OF CHANGE OF ADDRESS

**KAISER SAURBORN & MAIR, P.C.**  
COUNSELORS AT LAW

Attorneys for

Plaintiff

20 EXCHANGE PLACE  
NEW YORK, NEW YORK 10005  
(212) 338-9100

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: .....

Signature.....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated: .....

Attorney(s) for

## PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF  
ENTRYthat the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

20

NOTICE OF  
SETTLEMENTthat an Order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within named Court,  
at  
on 20 , at M.

Dated: .....

**KAISER SAURBORN & MAIR, P.C.**  
COUNSELORS AT LAW

Attorneys for

20 EXCHANGE PLACE  
NEW YORK, NEW YORK 10005

To:



Supreme NY 110639-07 8/3/07  
COURT COUNTY INDEX NO. DATE PURCHASED

PLAINTIFF(S):

Dong Shaw

DEFENDANT(S):

Bank of America

2-4-08

For Clerk Only 1-22-08 000470
IAS entry date 000792 PTH Lische
Judge Assigned 2-4-08
RJI Date mooi

Date issue joined: 9/20/07 Bill of particulars served (Y/N): [ ] Yes [X] No

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)

- [ ] Request for preliminary conference  
[ ] Note of issue and/or certificate of readiness  
[X] Notice of motion (return date: 2/4/08)  
Relief sought: pro hac vice application  
[ ] Order to show cause (clerk enter return date: )  
Relief sought: SRWC  
[ ] Other ex parte application (specify: )  
[ ] Notice of petition (return date: )  
Relief sought:   
[ ] Notice of medical or dental malpractice action (specify: )  
[ ] Statement of net worth  
[ ] Writ of habeas corpus VAL 2  
[ ] Other (specify: )

INDEX NUMBER 110639	YEAR 2007
6 RJI FEE	95.00
15 MOTIONS	45.00
TOTAL	140.00
CHECK	95.00
CHECK	45.00

NATURE OF ACTION OR PROCEEDING (Check ONE box only)

MATRIMONIAL

- [ ] Contested -CM  
[ ] Uncontested -UM

COMMERCIAL

- [ ] Contract -CONT  
[ ] Corporate -CORP  
[ ] Insurance (where insurer is a party, except arbitration) -INS  
[ ] UCC (including sales, negotiable instruments) -UCC  
[ ] \*Other Commercial -OC

REAL PROPERTY

- [ ] Tax Certiorari -TAX  
[ ] Foreclosure -FOR  
[ ] Condemnation -COND  
[ ] Landlord/Tenant -LT  
[ ] \*Other Real Property -ORP

OTHER MATTERS

- [X] \*Employment law -OTH

TORTS

Malpractice

- [ ] Medical/Podiatric  
[ ] Dental  
[ ] \*Other Professional  
[ ] Motor Vehicle -MV  
[ ] \*Products Liability -PL  
[ ] Environmental -EN  
[ ] Asbestos -ASB  
[ ] Breast Implant -BI  
[ ] \*Other Negligence -OTN  
[ ] \*Other Tort (including intentional) -OT

SPECIAL PROCEEDINGS

- [ ] Art. 75 (Arbitration) -ART75  
[ ] Art. 77 (Trusts) -ART77  
[ ] Art. 78 -ART78  
[ ] Election Law -ELEC  
[ ] Guardianship (MHL Art. 81) -GUARD81  
[ ] \*Other Mental Hygiene -MHYG  
[ ] \*Other Special Proceeding -OSP

CONS CASHIER DATE TIME TERM  
05665 1000 -WA JAN 10 10:17 AM 60-3

Is this action/proceeding against a

YES NO YES NO  
☐ ☒ Municipality: ☐ ☒ Public Authority:  
 (Specify \_\_\_\_\_) (Specify \_\_\_\_\_)

YES NO  
☐ ☒ Does this action/proceeding seek equitable relief?  
☐ ☒ Does this action/proceeding seek recovery for personal injury?  
☐ ☒ Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

☐ Expedited: 0-8 months ☒ Standard: 9-12 months ☐ Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served? ☐ No ☐ Yes, Date \_\_\_\_\_  
 Was a Notice of No Necessity filed? ☐ No ☐ Yes, Date \_\_\_\_\_

ATTORNEY(S) FOR PLAINTIFF(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	DANIEL KAISER from Kaiser Saur Born & Mair PC	20 Exchange Place, NY, 10005	(212) 338-9100
<input type="checkbox"/>			

ATTORNEY(S) FOR DEFENDANT(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
<input type="checkbox"/>	Laurie Morrison from Edwards Angell Palmer & Dodge LLP	700 Lexington, NY, 10022	(212) 912-2916
<input type="checkbox"/>			

\*Self Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

N/A

RELATED CASES: (IF NONE, write "NONE" below)

Title Index # Court Nature of Relationship

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 1/9/08

  
 (SIGNATURE)

Laurie Morrison  
 (PRINT OR TYPE NAME)

attorney for defendant Bank of America  
 ATTORNEY FOR

ATTACH RIDER SHEET IF NECESSARY TO PROVIDE REQUIRED INFORMATION



200

110639

INDEX#: 110639 DATE: 08/03/2007 FIRM: Y

SHAW DONG

VS

BANK OF AMERICA

8/20/07 ASSAULT  
2/3/07 SLT

9/8/07 SLT  
1/20/07 AMS

10/5/07 WATZ

11/15/07 WATZ

03/21/08 IAS pt 1000

05/02/08 SHIP/PTC

05/14/08 NOTICE

**COUNTY CLERK, NEW YORK COUNTY**Application for INDEX NUMBER pursuant to Section 8018,  
C.P.L.R.**FEE \$210.00****INDEX NUMBER**

Do not write in this space

Space below to be TYPED or PRINTED by applicant

**TITLE OF ACTION OR PROCEEDING****CHECK ONE**

*Dong Shaw,*  
*Plaintiff,*  
*- against -*  
*Bank of America,*  
*Defendant*

☐ COMMERCIAL  
ACTION☒ NOT  
COMMERCIAL  
ACTION☐ CONSUMER  
CREDIT  
TRANSACTION☒ NOT  
CONSUMER  
CREDIT  
TRANSACTION☐ THIRD  
PARTY  
ACTION☒ NOT  
THIRD  
PARTY  
ACTION**IF THIRD PARTY ACTION  
MAIN INDEX NO.**

**Name and address of Attorney for Plaintiff or Petitioner.** *Daniel J. Kaiser, Esq.*  
*Kaiser Savarborn & Mair, P.C.*  
*20 Exchange Place, 11th Fl.*  
*New York, N.Y. 10005*  
**Telephone No.** *T: 212-338-9100*

**Name and address of Attorney for Defendant or Respondent.**  
**Telephone No.**

**A. Nature and object of action or Nature of special proceeding** *Employment Discrimination and Retaliation*

**B. Application for Index Number filed by:** Plaintiff ☒ Defendant ☐

**C. Was a previous Third Party Action filed** Yes ☐ No ☒  
**Date filed** \_\_\_\_\_

07110639



Laurie E. Morrison  
 EDWARDS ANGELL PALMER & DODGE LLP  
 Attorneys for Defendant  
 750 Lexington Avenue  
 New York, New York 10022  
 (212) 308-4411

**SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK**

DONG SHAW,

Plaintiff,

- against -

BANK OF AMERICA,

Defendant.

Index No.: 110639/07

**NOTICE OF MOTION  
 FOR PRO HAC VICE ADMISSION**

PLEASE TAKE NOTICE that, upon the annexed affirmation of Laurie E. Morrison, dated January 9, 2008, together with the exhibit thereto, defendant will move this Court, at Room 130, Motion Support Courtroom, at the Courthouse at 60 Centre Street, New York, New York, 10007, on the 4th day of February, 2008, at 9:30a.m., or as soon thereafter as counsel can be heard, for an order admitting Siobhan Michele Sweeney, Esq. pro hac vice pursuant to 22 NYCRR 602.2(a).

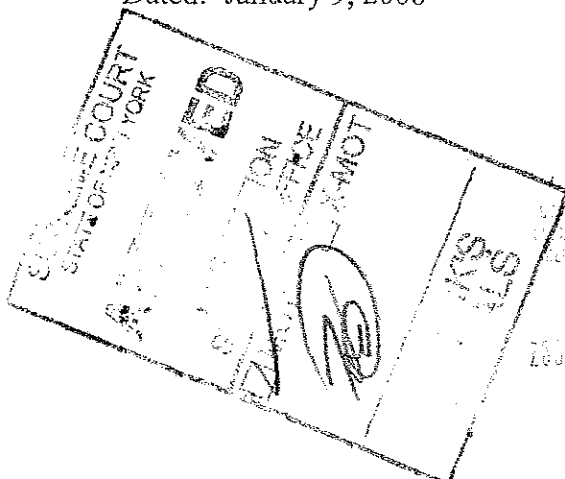
PLEASE TAKE FURTHER NOTICE that, pursuant to C.P.L.R. 2214(b), plaintiff's opposition papers are due seven days prior to the return date.

Dated: January 9, 2008

INDEX NUMBER	YEAR	2007
6 RTI FEE		95.00
15 MOTIONS		45.00
TOTAL		140.00
CHECK		95.00
CHECK		45.00

Laurie E. Morrison, Esq.  
 EDWARDS ANGELL PALMER & DODGE LLP  
 Attorneys for Defendant  
 750 Lexington Avenue  
 New York, NY 10022  
 (212) 308-4411

CONS CASHIER DATE TIME TERM  
 05665 1000 08 JAN 10 10:17 AM 60-3



2008 JAN 10 10:17 AM 60-3

318018

3/21/2008

EDWARDS ANGELL PALMER & DODGE LLP  
 COUNTY CLERK AND CLERK OF THE  
 SUPREME COURT, NEW YORK COUNTY  
 SIGNATURES REQUIRED  
 COUNTY CLERK'S OFFICE

TO: Attorneys for Plaintiff  
KAISER SAURBORN & MAIR, P.C.  
20 Exchange Place, 11<sup>th</sup> Floor  
New York, New York 10005  
(212) 338-9100

Laurie E. Morrison  
EDWARDS ANGELL PALMER & DODGE LLP  
Attorneys for Defendant  
750 Lexington Avenue  
New York, New York 10022  
(212) 308-4411

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

---

DONG SHAW,

Index No.: 110639/07

Plaintiff,

- against -

BANK OF AMERICA,

**AFFIRMATION OF LAURIE E.  
MORRISON IN SUPPORT OF THE  
MOTION FOR PRO HAC VICE  
ADMISSION**

Defendant.

---

LAURIE E. MORRISON, a member of the bar of the state of New York affirm  
the following under penalty of perjury:

1. I am a member of the bar of the state of New York, and I am an associate  
of the firm of Edwards Angell Palmer & Dodge LLP, attorneys for defendant.


2. I make this affirmation in support of defendant's motion for the admission  
pro hac vice of Siobhan Michele Sweeney, a member of my firm.

3. Annexed as exhibit A is a certificate of Ms. Sweeney's good standing in  
the State of Massachusetts.

4. I have worked with Ms. Sweeney and know her to be an excellent attorney  
of the highest professional and ethical standards.



Dated: January 9, 2008



---

Laurie E. Morrison

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the **eighteenth** day of **December** A.D. **1992**, said Court being the highest Court of Record in said Commonwealth:

**Siobhan M. Sweeney**

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court\*.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this **nineteenth** day of **December** in the year of our Lord **two thousand and seven**.



  
MAURA S. DOYLE, Clerk

\* Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.

JOHN FRANCAVILLO, being duly sworn, deposes and says:

On January 9, 2008 I served the attached Notice of Motion, Affirmation in support, and RJ1 upon Kaiser Sauborn & Mair, P.C., at 20 Exchange Place, 11<sup>th</sup> floor, New York, New York 10005 by mailing true copies in a post paid, properly addressed wrapper under the exclusive care of the U.S. Postal Service within the state of New York.

Sworn to before me this  
9<sup>th</sup> day of January 2008

~~Notary Public~~

GLENN M. HUZINEC  
Notary Public, State of New York  
No. 01HU4873127  
Qualified in Kings County and NY County  
Commission Expires Oct. 6, 2010

EDWARDS ANGELL PALMER & DODGE LLP

**FILED**  
MAR 21 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

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IAS MOTION  
SUPPORT OFFICE

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Index Number : 110639/2007

SHAW, DONG

vs

BANK OF AMERICA

Sequence Number : 001

SUBT/WITHDRAW/RELIEVE COUNSEL

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

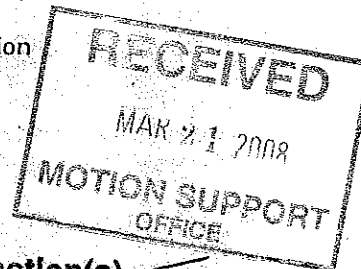
Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion



motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.

**FILED**

MAR 21 2008

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3/12/08

JUDITH J. GISCHE, J.S.C. J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

*MIA*

REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----X  
DONG SHAW,

Plaintiff,

-against-

BANK OF AMERICA,

Defendant.  
-----X

**Decision/Order**

Index No.: 110639/07

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

**FILED**  
MAR 21 2008  
NEW YORK  
CLERK'S OFFICE

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

**Papers**

Pltf's motion [pro hac vice] w/LEM affid in support, exhs ..... 1  
-----X

*Upon the foregoing papers, the decision and order of the court is as follows:*

This motion is by defendant, on behalf of attorney Siobhan Michele Sweeney, Esq. Attorney Sweeney seeks admission *pro hac vice* to the Supreme Court of the State of New York, New York County, in connection with the above-captioned action, so that she may represent defendant. New York Rules of Court §§ 520.11 and 602.2.

The motion, which has been served on plaintiff, has been submitted to the court without opposition. Defendant has provided to the court proof of Attorney Sweeney's good standing with the Massachusetts bar. New York Rules of Court § 520.11 [a]. In further support of it's application, defendant has provided the affirmation of Laurie E. Morrison, Esq.

Accordingly, defendant's motion is granted as unopposed.

It is hereby:

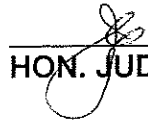
**ORDERED** that the motion by defendant to have Siobhan Michele Sweeney, Esq admitted *pro hac vice* is hereby GRANTED; and it is further

**ORDERED** that Siobhan Michele Sweeney, Esq is hereby admitted *pro hac vice* for all purposes in connection with the above-captioned action, and she shall be familiar with and shall comply with the standards of professional conduct imposed upon members of the New York bar, and other rules governing the conduct of attorneys. New York Court Rules § 520.11[d].

This shall constitute the decision and order of the Court.

Dated: New York, New York  
March 12, 2008

So Ordered:

  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**  
MAR 21 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

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Page 2 of 2

3/21/2008

  
COUNTY CLERK AND CLERK OF THE  
SUPREME COURT, NEW YORK COUNTY  
RECEIVED MAR 21 2008  
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SUPREME COURT FOR THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DONG SHAW,

Plaintiff,

BANK OF AMERICA,

Defendant.

Index No.: 110639/07

STIPULATION AND ORDER

WHEREAS, Plaintiff Dong Shaw ("Plaintiff") claims that defendant Bank of America ("Defendant") terminated his employment on August 8, 2006 because of his race (Asian) and national origin (China) in violation of New York Human Rights Law and New York City Human Rights Law. Plaintiff also asserts that the Defendant retaliated against him after he complained about alleged discrimination. Defendant denies engaging in any discriminatory or retaliatory conduct. Defendant asserts that it legitimately terminated Plaintiff's employment due to his sustained and documented history of poor performance, which he failed to remedy despite being given opportunities to improve.

IT IS STIPULATED AND AGREED by counsel for the parties that the following disclosures and deadlines shall apply to this matter:

1. INSURANCE COVERAGE: Not applicable.
2. BILL OF PARTICULARS: Not applicable.
3. MEDICAL REPORTS AND AUTHORIZATIONS: Not applicable.
4. PHYSICAL EXAMINATION: Not applicable.

**FILED**  
MAY 02 2008  
NEW YORK  
COUNTY CLERKS OFFICE



5. DEPOSITIONS: Plaintiff's deposition shall be held on either May 20 or 21, 2008 or another date in May that is reasonably available to all of the parties. Defendant's deposition will be subsequently scheduled on a date that is reasonably convenient for the parties.

6. OTHER DISCLOSURE: Plaintiff's responses to Defendant's request for admissions shall be served by April 21, 2008. Plaintiff shall serve his answers to interrogatories, written document responses, and responsive documents by May 5, 2008.

7. COMPLIANCE CONFERENCE: October 30, 2008 at 9:30 a.m.

8. IMPLEADER: Not applicable.

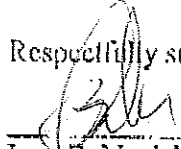
9. END DATE FOR ALL DISCLOSURES: December 31, 2008

10. MOTIONS: ~~Any dispositive motion(s) shall be made on or before March 2, 2009 (60 days after the close of discovery).~~ *as per CPLR 3212 (120 days)*

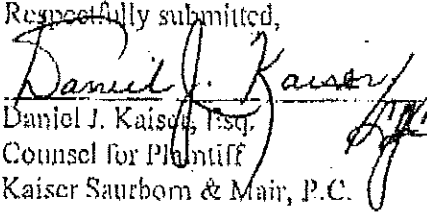
11. NOTE OF ISSUE: Either Plaintiff or Defendant shall file a note of issue/certificate of readiness on or before January 14, 2009 (14 days after the close of discovery).

12. Based on this Stipulation and Order, the Preliminary Conference scheduled for April 17, 2008, at 9:30 a.m. ~~is cancelled.~~ *has proceeded.*

Respectfully submitted,

  
Ivan R. Novich, Esq.  
Counsel for Defendant  
Edwards Angell Palmer & Dodge LLP  
750 Lexington Avenue  
New York, NY 10022  
Tele. No. (973) 921-5227  
Fax No. (973) 376-3380

Respectfully submitted,

  
Daniel J. Kaiser, Esq.  
Counsel for Plaintiff  
Kaiser Saurborn & Mair, P.C.  
20 Exchange Place, 11th Floor  
New York, New York 10005  
Tele. No. (212) 338-9100

Dated: April 17, 2008

Dated: April 16, 2008

**FILED**  
MAY 02 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

5/2/2008

DATES SET FORTH ABOVE MAY NOT BE ADJOURNED EXCEPT WITH ADVANCE  
APPROVAL OF THE COURT.

SO ORDERED:

  
HON. JUDITH J. GISCHEL, J.S.C.  
JUDITH J. GISCHEL, J.S.C.

Dated: April 17, 2008

**INDIVIDUAL ASSIGNMENT PART [OR JUSTICE]**

*Ang Shaw*

Plaintiff(s),

- against -

*Bank of America*

Defendant(s).

Index No.

*110639/07*

DCM Track

**PRELIMINARY CONFERENCE  
ORDER**

(202.8, 202.12 and 202.19  
of the Uniform Rules)

**APPEARANCES**

Plaintiff(s):

*Edwards Angel Palmer + Dodge*

Defendant(s):

*Kaiser Seaborn*

It is hereby ORDERED that disclosure shall proceed as follows:

- (1) **Insurance Coverage:** If not already provided, shall be furnished by \_\_\_\_\_ on or before \_\_\_\_\_.
- (2) **Bill of Particulars:**
- (a) Demand for a bill of particulars shall be served by \_\_\_\_\_ on or before \_\_\_\_\_.
  - (b) Bill of particulars shall be served by \_\_\_\_\_ on or before \_\_\_\_\_.
  - (c) A supplemental bill of particulars shall be served by \_\_\_\_\_ as to items \_\_\_\_\_ on or before \_\_\_\_\_.
- (3) **Medical Reports and Authorizations:**  
Shall be served as follows: \_\_\_\_\_
- (4) **Physical Examination:**
- (a) Examination of \_\_\_\_\_ shall be held \_\_\_\_\_.
  - (b) A copy of the physician's report shall be furnished to plaintiff within \_\_\_\_\_ days of the examination.
- (5) **Depositions:** Depositions of ☐ Plaintiff(s) ☐ Defendant(s) ☐ All Parties shall be held \_\_\_\_\_.
- (6) **Other Disclosure:**
- (a) All parties, on or before \_\_\_\_\_, shall exchange names and addresses of all eye witnesses and notice witnesses, statements of opposing parties, and photographs, or, if none, provide an affirmation to that effect.
  - (b) Authorization for plaintiff(s)' employment records for the period \_\_\_\_\_ shall be furnished on or before \_\_\_\_\_.
  - (c) Demand for discovery and inspection shall be served by \_\_\_\_\_ on or before \_\_\_\_\_. The items sought shall be produced to the extent not objected to, and objections, if any, shall be stated on or before \_\_\_\_\_.
  - (d) Other [interrogatories, etc.] \_\_\_\_\_.

Case Name: Shaw v. B.A.

Index No: \_\_\_\_\_

PC ORDER - Page 2

(7) End Date for All Disclosure: \_\_\_\_\_

(8) Impleader: Shall be completed on or before \_\_\_\_\_

(9) Compliance Conference: Shall be held on \_\_\_\_\_

(10) Motions: Any dispositive motion(s) shall be made on or before \_\_\_\_\_

(11) Note of Issue: 11/14/09 shall file a note of issue/certificate of readiness on or before 11/14/09. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.

SO ORDERED:

Dated: 4/17/08

J. J. GISCHE  
JUDITH J. GISCHE, J.S.C.

## ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

**FILED**  
MAY 02 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: \_\_\_\_\_

SO ORDERED:

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TS-13a (REV 4/15/02)

J.S.C.

5/2/2008

CLERK OF THE  
COUNTY OF NEW YORK  
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COUNTY CLERK'S OFFICE

EDWARDS ANGELL PALMER & DODGE, LLP  
One Giralda Farms  
Madison, NJ 07940  
Telephone: (973) 520-2300  
Facsimile: (973) 520-2600  
Attorneys for Defendant Bank of America

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DONG SHAW,

Plaintiff,

- against -

BANK OF AMERICA,

Defendant.

Index No.: 110639/07

**NOTICE OF FILING NOTICE OF  
REMOVAL BY DEFENDANT BANK  
OF AMERICA, N.A.**

To: New York County Clerk  
New York Supreme Court  
60 Centre Street  
Room 141B  
New York, NY 10070

Sir or Madam:

PLEASE TAKE NOTICE that on this date defendant Bank of America, N.A. filed a Notice of Removal of the above entitled action with the Clerk of the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. A copy of the defendant's Notice of Removal is annexed hereto as Exhibit 1.

EDWARDS ANGELL PALMER & DODGE, LLP  
Attorneys for Defendant  
Bank of America, N.A.

By: 

Ivan R. Novich, Esq.

Dated: May 14, 2008

**FILED**

MAY 16 2008

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COUNTY CLERK AND CLERK OF THE  
SOUTHERN DISTRICT OF NEW YORK  
COUNTY CLERK'S OFFICE  
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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

DONG SHAW,

Plaintiff,

v.

BANK OF AMERICA,

Defendant.

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C.A. No.:

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§1441(a), 1441(b) and 1446 and Local Civil Rule 81.1, and for the sole purpose of removing this matter to the United States District Court for the Southern District of New York, Defendant Bank of America, N.A., incorrectly identified by Plaintiff Dong Shaw ("Plaintiff") as "Bank of America" ("Defendant"), states:

1. State Court Action.

Plaintiff filed this action against Defendant in the New York State Supreme Court, County of New York, Index No. 100639-2007, on or about August 3, 2007. A copy of the Summons and Complaint that were served on Defendant's statutory agent on or about August 13, 2007 are attached as Exhibit 1.

2. Diversity of Citizenship.

On March 14, 2008, Defendant served a Notice To Admit on Plaintiff, a copy of which is attached as Exhibit 2. On April 21, 2008, Plaintiff served his Responses To Defendant's Notice To Admit (the "Admission Responses"), a copy of which is attached as Exhibit 3. In Admission Response No. 1, Plaintiff admitted that he is a citizen of the State of New York. In Admission Response No. 3, Plaintiff admitted that his permanent residence is in the State of New York. Upon information and belief, Plaintiff's address is 68-22 Clyde Street, Forest Hills, New York.

As Defendant stated in Paragraph 2 of its Answer, a copy of which is attached as Exhibit 4, Defendant is a national banking association formed under the laws of the United States of America with its principal place of business in Charlotte, North Carolina. The Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332.

3. Amount in Controversy

The Complaint contains two causes of action alleging national origin/race discrimination and retaliation in violation of New York Executive Law § 296 and New York City Administrative Code § 8-502(a), et seq. In Admission Response No. 5, Plaintiff admitted that, through this litigation, he is seeking damages that exceed the sum or value of \$75,000, exclusive of interest and costs. In addition, Plaintiff admitted in Admission Response No. 4 that he is seeking "economic damages resulting from lost past and future earnings," as alleged in Paragraph 25 of the Complaint, that exceed the sum or value of \$75,000, exclusive of interest and costs. Because complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000, jurisdiction is conferred on this Court by 28 U.S.C. § 1332.

4. Diversity Jurisdiction.

This action is one under which the Court has original jurisdiction pursuant to 28 U.S.C. §1332 and which may be removed to this Court pursuant to 28 U.S.C. §1441, as it is a civil action in which the Plaintiff is a resident of the State of New York and the Defendant is not, and in which the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. Timeliness of Notice of Removal.

Plaintiff's Complaint provided no information identifying the amount of damages he was seeking to recover, nor did it suggest the sum or value of the amount in controversy. Therefore,

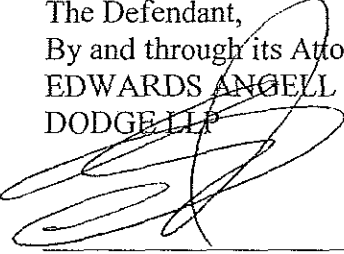


the case stated by the initial pleading was not removable. On April 21, 2008, however, Defendant received Plaintiff's Admission Responses. It was from these Admission Responses that it was first ascertained that the action was one which had become removable. Defendant has filed this Notice of Removal within thirty days after receipt of Plaintiff's Admission Responses. Removal of this action is, therefore, timely under 28 U.S.C. § 1446(b).

6. Relief Requested.

Defendant requests that the United States District Court for the Southern District of New York assume jurisdiction over the above-captioned action and issue such further orders and processes as may be necessary to bring before it all parties necessary for the trial of this action.

The Defendant,  
By and through its Attorneys,  
EDWARDS ANGELL PALMER &  
DODGE LLP



---

Ivan Novich, Esq.  
One Giralda Farms  
Madison, NJ 07940  
Telephone No. (973) 921-5227  
Fax No. (888)325-9515  
inovich@eapdlaw.com

Dated: May 14, 2008

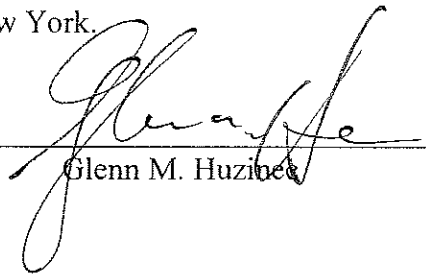
AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK                     )  
  )ss.:  
COUNTY OF NEW YORK                )

Glenn M. Huzinec, being duly sworn deposes and says: I am over 18 years of age, and I am not a party to the within action, and I am employed by Edwards Angell Palmer & Dodge LLP. On the 16<sup>th</sup> day of May, 2008, I served The Notice of Filing of The Notice of Removal upon:

Daniel J. Kaiser  
Kaiser Saurborn & Mair, P.C.  
111 Broadway, 18<sup>th</sup> Floor  
NY, NY 10006

by depositing a true and exact copy of the above mentioned document, enclosed in a post-paid properly addressed envelope, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
Glenn M. Huzinec

Sworn to before me this  
16th day of May, 2008



Notary Public

**JOHN FRANCAVILLO**  
Notary Public, State of New York  
No. 24-4838118  
Qualified in Kings County  
Certificate Filed in Kings County  
Commission Expires Oct. 31, 2009

NEW YORK  
COUNTY CLERKS OFFICE

MAY 16 2008

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